

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DWAINE ANTHONY GREEN,)
)
Plaintiff,)
)
v.) CV 04-AR-2916-S
)
SHERIFF MIKE HALE,)
)
Defendant.)

MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on December 10, 2004, recommending that all claims in this action be dismissed for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915A(b)(1) and/or (2), unless the plaintiff named Deputy Bates as a defendant within fifteen (15) days of the entry date of the report and recommendation. The magistrate judge instructed the plaintiff that if he were to amend his complaint to name Deputy Bates as a defendant within the time period allotted, the magistrate judge's recommendation would be that all claims in this action, except for the retaliation claim and excessive force claim against Deputy Bates, be dismissed for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915A(b)(1) and/or (2). On December 20, 2004, the plaintiff filed a document which shall be liberally construed as objections to the magistrate judge's report and recommendation and an amended complaint (doc. 8) in which the plaintiff names Deputy Bates as a defendant.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the objections thereto, and the amended complaint, the court is of the opinion that the magistrate judge's report is due to be and is hereby

ADOPTED and the magistrate judge's recommendation is **ACCEPTED**. Therefore, all of the plaintiff's claims in this action, except for the retaliation claim and excessive force claim against Deputy Bates, are due to be **DISMISSED** for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915A(b)(1) and/or (2). Moreover, the retaliation claim and excessive force claim against Deputy Bates are due to be **REFERRED** to the magistrate judge for further proceedings.

DATED this 11th day of January, 2005.



WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE